

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA**

UNITED STATES OF AMERICA,

Plaintiff/Respondent,

vs.

Nos. CIV 16-0388 JB/SMV
CR 09-2619 JB

ERNIE MARTINEZ,

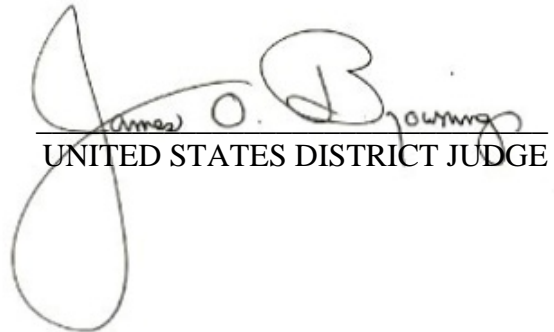
Defendant/Movant.

**MEMORANDUM OPINION AND ORDER OF DISMISSAL OF MOTION TO
CORRECT SENTENCE PURSUANT TO 28 U.S.C. § 2255**

THIS MATTER comes before the Court, under rule 4 of the Rules Governing Section 2255 Proceedings, on (i) the Defendant/Movant's Motion to Vacate, Set Aside or Correct Sentence Under 28 U.S.C. § 2255, filed June 22, 2016 (CIV Doc. 5)(“§ 2255 Motion”); (ii) the Defendant/Movant's Motion to Vacate and Correct Sentence Under 28 U.S.C. § 2255, filed May 5, 2016 (CR Doc. 58)(“Amended Motion”); and (iii) the Defendant/Movant's Supplemental Motion to Vacate, Set Aside or Correct Sentence 28 U.S.C. § 2255, filed July 29, 2016 (CIV Doc. 12)(“Suppl. Motion”). In his § 2255 Motion, Defendant/Movant Ernie Martinez alleges that he improperly received an enhanced sentence as a career offender under the United States Sentencing Guidelines, because U.S.S.G. § 4B1.2's residual clause is unconstitutionally vague under the reasoning in Johnson v. United States, 576 U.S. ___, 135 S. Ct. 2551 (2015). In Beckles v. United States, 580 U.S. ___, No. 15-8544, slip op (March 6, 2017), the Supreme Court of the United States of America held that the United States Sentencing Guidelines are not subject to a void-for-vagueness challenge. See 580 U.S. ___, No. 15-8544, slip op at 5. Pursuant to the Court's Order, filed March 13, 2017 (CR Doc. 75), the parties have filed a

Statement that the ruling in Beckles is dispositive of all issues raised in Martinez' § 2255 Motion, Amended Motion, and Suppl. Motion, and that the Court should dismiss his § 2255 with prejudice. See Proposed Joint Statement, filed March 22, 2017 (CR Doc. 76). Martinez is not entitled to relief, and the Court will dismiss his § 2255 Motion, Amended Motion, and Suppl. Motion under rule 4.

IT IS ORDERED that: (i) the Defendant/Movant's Motion to Vacate, Set Aside or Correct Sentence Under 28 U.S.C. § 2255, filed June 22, 2016 (CIV Doc. 5); (ii) the Defendant/Movant's Motion to Vacate and Correct Sentence Under 28 U.S.C. § 2255, filed May 5, 2016 (CR Doc. 58); and (iii) the Defendant/Movant's Supplemental Motion to Vacate, Set Aside or Correct Sentence 28 U.S.C. § 2255, filed July 29, 2016 (CIV Doc. 12), are dismissed with prejudice under rule 4 of the Rules Governing Section 2255 Proceedings.



UNITED STATES DISTRICT JUDGE

Counsel:

James D. Tierney
Acting United States Attorney
Jon K. Stanford
Assistant United States Attorney
United States Attorney's Office
Albuquerque, New Mexico

Attorneys for the Plaintiff/Respondent

Jason Bowles
Bowles Law Firm
Albuquerque, New Mexico

-- and --

Roberto Albertorio
Albuquerque, New Mexico

-- and --

David A. Streubel
Cunningham, Vogel & Rost, P.C.
Saint Louis, Missouri

-- and --

John Van Butcher
Office of the Federal Public Defender
Albuquerque, New Mexico

Attorneys for the Defendant/Movant